

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CRIMINAL CASE NO. 3:01cr216

UNITED STATES OF AMERICA)
)
)
)
vs.) O R D E R
)
)
MICHAEL LOVELLE.)
)

THIS MATTER is before the Court on the Defendant's Motion to Terminate Gun Conviction Pursuant to Defendant's Constitutional Right to Possess a Gun Under the Second Amendment [Doc. 279], filed on July 21, 2008. For the reasons set forth below, the Defendant's motion is frivolous and is denied.

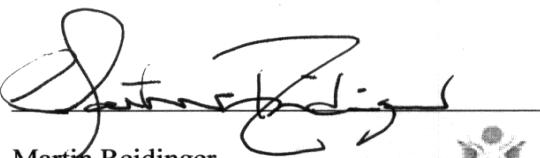
On July 22, 2003, the Defendant was sentenced to 95 months imprisonment based upon his guilty plea to the charge of conspiracy to possess with intent to distribute cocaine and cocaine base in violation of 21 U.S.C. §§841(a)(1) and 846. [Doc. 226]. The Defendant did not plead to, nor was he charged with, a "gun crime" as alleged in his motion. The Defendant's motion [Doc. 279] is therefore clearly frivolous.

Prisoners do not have an absolute and unconditional right of access to the courts in order to prosecute frivolous or abusive motions. DePineda v. Hemphill, 34 F.3d 946, 948 (10th Cir. 1994). The Defendant is hereby warned that future frivolous filings will result in the imposition of a pre-filing review system. See Vestal v. Clinton, 106 F.3d 553, 555 (4th Cir. 1997). The Defendant is cautioned that if such a system is placed in effect, pleadings presented to the Court which are not made in good faith and which lack substance will be summarily dismissed as frivolous, Foley v. Fix, 106 F.3d 556, 558 (4th Cir. 1997), and if such filings persist, the Court may modify the pre-filing review system to include an injunction from filings. See, e.g., In re Martin-Trigona, 737 F.2d 1254, 1262 (2d Cir. 1984).

Accordingly, **IT IS, THEREFORE, ORDERED** that the Defendant's Motion to Terminate Gun Conviction Pursuant to Defendant's Constitutional Right to Possess a Gun Under the Second Amendment [Doc. 279] is **DENIED**.

IT IS SO ORDERED.

Signed: August 12, 2008



Martin Reidinger
United States District Judge

